

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

GWENDA J. JERNIGEN,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of the Social Security
Administration,**

Defendant.

Case No. CIV-07-437-SPS

**OPINION AND ORDER REGARDING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES UNDER THE EAJA**

The parties have advised the Court they are in agreement that the Court's order denying the Plaintiff's Application for Attorney's Fees Under the Equal Access to Justice Act [Docket No. 38] should be vacated and that the Plaintiff's attorney should be awarded attorney's fees in the stipulated amount of \$6,958.00 under the Equal Access to Justice Act (the "EAJA"), 28 U.S.C. § 2412. The Plaintiff's Motion to Vacate the Court's Order Dated July 7, 2009 [Docket No. 39] is hereby GRANTED, and said order is hereby VACATED.

Upon review of the record herein, the Court finds that the stipulated amount of \$6,958.00 is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein under the EAJA. *See* 28 U.S.C. § 2412(d)(1)(A) ("Except as otherwise specifically provided by statute, a court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action [.]"). *See also Manning v. Astrue*, 510 F.3d 1246, 1249-50 (10th Cir. 2007), *cert. denied*, __ U.S. __, 77 USLW 3020 (2008). Accordingly, the Plaintiff's Application for Attorney's Fees Under the Equal Access

to Justice Act [Docket No. 25] is hereby GRANTED, and the Plaintiff is awarded attorney's fees under the EAJA in the stipulated amount of \$6,958.00. If the Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of any such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 20th day of July, 2009.



STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE